25-4-94
5-30 PM

Cri A 827/94

/- APPEAL OF PRISONER -/

5 Name चन्दरु

ther's Name सुखदास Residence ग्राम - चिलपुटी
वनरक्षा केन्द्र - कैजलपुर बस्तर

26 Sentenced to आजीवन कठावास on

15.4.94 under Section 302 I.P.C by द्वितीय अति. सत्र न्यायाधीश जगदलपुर

S.T.No. 461/93

It is explained to the prisoner that if he states or shes to be represented by a legal practitioner the Appellate urt will not proceed with the base for seven days unless the gal practitioner appears. If the legal practitioner does t appear with in seven days he may be heard at all if the isoner states that the does not wish to be represented by gal practioner the Court may proceed at once with the case d will not be obliged to give a hearing to any legal proct-ioner who shoud appear.

Date of application for copy of Judgement: No.

Date of which copy received:- 15.4.94

Date on which Appelisent:- 20.4.94

Whether the prisoner wished to be represented or not Yes/~~No.~~

5 Name चन्दरु s/o सुखदास

ntinued in 12/93 to 14/4/94 Jail Jagdalpur. Bastar M.P.

14 /octagon./94 Dated 20/4/94

rwarded to the CHIEF JUDICIAL MAGISTRATE Jagdalpur gather with a copy of judgement or order passed in the case r favour of transmission to the proper Appliate Court.

Superintendent
Dist. Jail Class I, Jagdalpur

Superintendent-Central/Distt./Sub-Jail.

te of receipt in C.J.M's Office. 22/4/94

te of receipt of record of accompany.

mo of Appeal of the Appelliate Court.

. 11/94 Dated 25/4/94

rwarded to the Session Judge Jagdalpur.

C.J.Magistrate

ate of receipt of Appelliate Court 25/4/94

(40)

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

DIVISION BENCH: **HON'BLE SHRI K.H.N. KURANGA, CJ**
& HON'BLE SHRI L.C. BHADOO, J

CRIMINAL APPEAL NO.827 OF 1994

JUDGMENT FOR CONSIDERATION

Sd/-
L.C.BHADOO
Judge

HON'BLE THE CHIEF JUSTICE

I agree.

Sd/-
Chief Justice

Post for pronouncement of Judgment: 2

Sd/-

JUDGE
/04/2004

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

DIVISION BENCH: HON'BLE SHRI K.H.N. KURANGA, CJ & HON'BLE SHRI L.C. BHADOO, J

CRIMINAL APPEAL NO.827 OF 1994

APPELLANTS/ACCUSED — Chandru
S/o Sukdas Dhurva,
aged about 26 years,
R/o Village Chilputi.
Police Station: Frejarpur,
District: Bastar (CG)

VERSUS

RESPONDENT — State of Chhattisgarh

Present: Shri Abhay Kumar Tiwari, Counsel for the appellant.
Shri Satish Gupta, Dy. Govt. Advocate for the State/respondent.

J U D G M E N T
(Delivered on 26th of April 2004)

The following Judgment of the Court was delivered by

L.C. Bhadoo, J:

Accused/appellant Chandru has preferred this criminal appeal under Section 374 (2) of the Code of Criminal Procedure, 1973 being aggrieved by the judgment of conviction and sentence dated 15/04/1994, passed by the learned Second Additional Sessions Judge, Bastar at Jagdalpur in Sessions Trial No.461 of 1993 whereby the learned Second Additional Sessions Judge after holding the accused/appellant guilty of the offence punishable under Section 302 of the Indian Penal Code convicted and sentenced him to undergo imprisonment for life.

(2) Factual scenario giving rise to the present appeal is as follows: On 09.06.1993 at about 3.00 P.M. the accused/appellant went to the house of village Kotwar Sukdas and informed him that he had committed the murder of his uncle Dewoo by assaulting him on his neck with a Tangia from the sharp edged side and on the head from its blunt side. When Kotwar Sukdas asked the accused/appellant as to why he has murdered his uncle, the accused/appellant replied that he i.e. his uncle Dewoo was not allowing him to plough the field and he always used to quarrel at the residence. Sukdas asked

him to wait but the accused left the house of the Kotwar. Kotwar Sukdas after taking Hastu, Shankar and Lahngoo along with him went to the house of the accused and they saw the dead body of Dewoo. There was cut injury on the neck and another injury on the head of Dewoo. Blood was oozing out of the injuries. On the same day, Sukdas reported the matter to Frejarpur Police Station. The police registered Crime No. 120/93. The investigating Officer reached the scene of occurrence and after giving notice to the Panchas prepared the Panchanama of the dead body and sent the same for post mortem examination. Assistant Sub Inspector Surya Bhan Singh on 10.06.1993 seized the Tangia, weapon of offence, from the accused. He also seized plain soil and the blood stained soil from the scene of occurrence. Dr. K.R. Mourya conducted the autopsy on the dead body of Dewoo and prepared the post mortem report Ex.P/5.

(3) The Police after completing the investigation filed the charge-sheet against the accused Chandru, Budhram and Sonsingh in the Court of Additional Chief Judicial Magistrate, Jagdalpur, who in turn committed the case to the Sessions Court, Bastar from where the learned Second Additional Sessions Judge, received the case on transfer.

(4) The learned Second Additional Sessions Judge after hearing the arguments on charge and perusing the records was of the opinion that there was sufficient material to frame charge against accused Chandru, Budhram and Sonsingh under Section 302 or in the alternative, under Section 302 read with Section 34 of the Indian Penal Code. Accordingly he framed the charges against the accused persons for the commission of the aforesaid offences. The charges were read over and explained to the accused/appellants. The accused/appellants denied the charges and claimed to be tried.

(5) The prosecution in order to prove the charges against the accused persons examined in all five witnesses at the trial. The statements of the accused persons were recorded under Section 313 of the Code of Criminal Procedure in which they denied the allegations levelled against them and stated that they are innocent and have been falsely implicated in the crime. In defence accused/appellant Chandru examined two witnesses namely Lakhamu (DW-1) and Astu (DW-2).

(6) The learned trial Court, after hearing the arguments of the learned Additional Public Prosecutor and the learned counsel appearing for the accused persons acquitted accused Budhram and Sonsingh. However, after

believing the evidence of the prosecution witnesses, he convicted and sentenced the accused/appellant in the manner mentioned in para one of this judgment.

(7) We have heard Shri Abhay Kumar Tiwari, learned counsel for the accused/appellant and Shri Satish Gupta, Dy. Govt. Advocate for the State/respondent.

(8) As far as the nature of the death of deceased Dewoo being homicidal is concerned, it is not in dispute. PW-5 Dr. K. R. Mourya, has stated in his evidence that on 11.06.1993 he was working as Assistant Surgeon in the Maharani Hospital, Jagdalpur and on the request of the Police of Police Station Frejarpur he conducted the autopsy on the dead body of Dewoo. The body was in swollen condition. Maggots were crawling over the body. The skin of the chest and the stomach was not present. Mouth and the eyes were closed and the foul smell was emitting from the body. There was incised wound on the left side of the neck in the size of 8 cm x 4 cm x 6 cm, deep up to the muscles. There was an incised wound on the left parietal region of the skull in the size of 6 cm x 4 cm bone deep and on account of this injury brain matter was coming out and the parietal bone was fractured. The membrane was also lacerated and the carotid artery was also cut. The cause of death of the deceased was shock and hemorrhage. The injuries were ante mortem in nature. The post mortem report is Ex. P/5. The doctor also examined the Tangia and gave his report Ex.P/5. In the opinion of the doctor the above injuries could have been caused by the Tangia, which was shown to him. In view of the above evidence of the doctor and the evidence of PW-1 Sukdas, PW-2 Mahangi and PW-3 Krishnalal, it stands proved that the death of deceased Dewoo was homicidal.

(10) Now coming to the involvement of the accused/appellants in the murder of Dewoo, PW-1 Sukdas is an independent witness. He has stated in his evidence that on 09/06/1993 at about 2-3 P.M. he was in his house; at that time accused Chandru came to his house and informed him that he had committed the murder of his uncle Dewoo by assaulting him with Tangia and at that time the accused/appellant was holding blood stained Tangia in his hand. When he tried to snatch the Tangia the accused/appellant ran away. Thereafter he along with Shankar, Astoo and Lahngoo went to the house of accused and saw the dead body of Dewoo. There was incised wound on the neck of Dewoo and there was also an injury on the head. Thereafter, he

reported the matter at the Police Station. The report is Ex.P/1. The police seized the Tangia under Ex.P/2, which bears his signature. The police also seized the plain soil and the blood stained soil from the place of incident under Ex.P/3, which bears his signature. In the cross examination the defence has not been able to elicit anything, which makes the evidence of PW-1 untrustworthy or unreliable. PW-2 Mahangi is an eyewitness to the incident. She has stated in her evidence that she was engaged by the accused for grazing the cow and in lieu of he used to give her rice. When she went to the house of the accused Chandru for collecting rice as her labour charges, she saw that accused Chandru and Dewoo, the deceased, were present there and accused Chandru assaulted Dewoo with Tangia on his neck. Accused Budhram and Sonsingh were holding of Dewoo. Thereafter Dewoo died. PW-3 Krishnalal has stated that after hearing the noise coming out from the house of Sukdas, he peeped into the house of Sukdas. He saw the dead body of Dewoo and on seeing the dead body he became frightened. Accused Chandru, Son Singh and Budhram were standing near the dead body and accused Chandru was holding the Tangia in his hand. Thereafter he returned to his house. After sometime the accused persons came near his house. Dewoo was unmarried and he was residing with Sukdas. Accused Chandru, Budhram and Son Singh are the sons of Sukdas. In view of the above evidence, it stands proved that accused Chandru assaulted the deceased with Tangia on his neck and head and he made extra judicial confession before PW-1 Sukdas, the Kotwar of the village. PW-2 Mahangi has stated in her evidence that accused Chandru assaulted the deceased with Tangia.

(11) As far as the evidence of defence witnesses namely Lakhmu DW-1 and Astu, DW-2 is concerned; Lakhmu has stated that on the fateful day he and the accused/appellant were working together in the field and where the father of Chandru came and informed that Dewoo has died. The above evidence of this witness cannot be believed because in the first instance he is a relative of accused Chandru and secondly, on this aspect PW-1, PW-2 and PW-3 have not been cross examined on the point whether at the time of the incident accused Chandru was present in the agricultural field and whether he was not present at the scene of occurrence. Therefore, this evidence of DW-1 is an afterthought and the same cannot be believed. As far as DW-2 Astu is concerned his evidence is of general nature which is of no help to the accused.

(12) Therefore, in view of the above discussion, we are of the opinion that the finding of the learned trial Court holding the accused/appellant

Chandru guilty of the commission of murder of Dewoo, is based on proper appreciation of the evidence and we do not find any illegality or infirmity in the finding of the trial Court.

(13) Further, learned counsel appearing for the accused/appellant has not challenged the conviction. He has argued that the offence under Section 304, Part-II of the Indian Penal Code is made out against the accused/appellant as the prosecution has not been able to prove that the accused /appellant assaulted the deceased with the intention to commit his murder. Learned counsel relied upon the judgment of the Hon'ble Apex Court in the matter of **Shanmugam alias Kulandaivelu Vs State of Tamil Nadu** reported in **2003 CRI.L.J. 418** and in the matter of **Suresh Sita Ram Surve Vs State of Maharashtra** reported in **2003 CRI.L.J. 475.** In the case of **Shanmugam alias Kulandaivelu** (Supra) the Apex Court has held:

> "Accused in a petty quarrel armed with spear (pointed weapon) stabbed deceased on his abdomen and chest- Victim died a week after the incident, out of septicemia- Accused though was in position to cause instantaneous death of victim but left the spot after being persuaded by his wife who rushed to scene of offence on hearing the cries- Evidence of Doctor, who attended victim while in Hospital not leading to a definite conclusion as to sufficiency of injuries causing death in the ordinary course."

In the case of **Suresh Sita Ram Surve**(Supra) the Apex Court has held thus:

> "Post-mortem report reveals the cause of death by 4 injuries on chest and abdomen by Gupti- Consistent evidence of all witnesses that appellant pierced Gupti into stomach and abdomen of deceased- They witnessed only one injury being inflicted by appellant by Gupti- However, evidence of some of witnesses reveal that accused surrounded deceased and more than one person was armed with Gupti- Two Guptis recovered in place near incident- Under such circumstances, it can not be inferred that appellant caused all the severe injuries or the fatal injury."

These two cases are of no help to the accused/appellant in the present case. In the present case, as per the medical evidence the decease died due to shock and hemorrhage. PW-5 Dr. K.R. Mourya has stated in his evidence that the carotid artery was cut and that injury was sufficient in the ordinary course of nature to cause the death. Even otherwise, as per the medical evidence the left parietal region of the deceased was fractured and the brain material was coming out and the accused himself informed the Kotwar of the village that in the first instance he assaulted the deceased with sharp edged side of the Tangia on his neck and thereafter he assaulted him with the blunt side of the Tangi on his head and he further said that he had murdered his uncle because he was not allowing him to plough the filed and also he used to quarrel in the house. The death of the Dewoo was spontaneous. Therefore, in view of the above medical evidence, the nature of the injuries and the weapon of offence used in the crime and also the fact that the injuries were inflicted by the accused/appellant on vital parts of the body i.e. head and neck, we are of the opinion that the prosecution has been able to prove beyond reasonable doubt that the accused/appellant assaulted the deceased with the Tangia with the intention to cause his death and the injury which he caused with the dangerous weapon like Tangia on the head was sufficient in the ordinary course of nature to cause death. Therefore, looking to the facts of the present case, the above-cited judgments are of no help to the appellant.

(14) For the foregoing reasons, we are of the opinion that the conviction and sentence passed by the learned trial Court requires no interference by this Court as the same are based on proper appreciation of the evidence produced by the prosecution.

(15) In the result, the appeal preferred by the accused/appellant fails and the same is liable to be dismissed and it stands dismissed.

Sd/-
Chief Justice
04/2004

Sd/-
L.C.BHADOO
Judge